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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CARL BENSON, et al.,)	Civil No.08cv1186 BTM (AJB)
)	
Plaintiff,)	
v.)	REPORT AND RECOMMENDATION OF
)	DISMISSAL RE: PLAINTIFFS' ACTION
JERIMIAH BARRY, et al.,)	
)	
Defendants.)	
_____)	


The Court set a Order to Show Cause re: Dismissal for January 29, 2011 at 1:30 p.m. Plaintiffs Carl Benson and David Jackson were ordered to appear in person to show cause why the case should not be dismissed in light of the execution of an agreed settlement in the case. The case was previously settled, settlement agreement signed and consideration paid. Unfortunately, the plaintiffs did not file a joint motion to dismiss and avoided all contacts by defense counsel to achieve the signing and the filing of that document closing the case.

Plaintiffs Benson and Jackson were served in the normal course as they have throughout the case. Neither Mr. Benson nor Mr. Jackson appeared at the hearing or made any contact with the Court with regard to this issue. Both were warned that a failure to appear at the Settlement Disposition Conference, would be the basis for the filing of a Report and Recommendation re: dismissal of the action. It should be noted that this was all prompted by a failure to appear previously and it is clear that the plaintiffs, having received settlement consideration, are no longer attending to the requirements of the Court with regard to this case.

1 This Court, therefore, recommends to Judge Moskowitz that the case be dismissed with prejudice
2 at this time.

3 IT IS SO ORDERED.

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5 DATED: January 31, 2011

6 
7 Hon. Anthony J. Battaglia
8 U.S. Magistrate Judge
9 United States District Court
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